

**California Franchise Tax Board
Real Estate Withholding Update
April 4, 2003**

Three months have passed...

California's new real estate withholding law (AB 2065) has been in effect for several months and we're looking at it closely to make sure it works. We've had an opportunity to get feedback, respond to questions, and evaluate some of our internal processes. We've also met with and heard from escrow and realtor associations as well as other various external organizations. As part of our external research, we formed a focus group using representatives from external associations (escrow, realtor, and 1031 exchange accommodators), and FTB staff. We held the first focus group meeting on February 24, 2003 and scheduled our next meeting for the last week of May. We're hearing from you.

What we're hearing...

In the last month, we've noticed a trend in the types of questions and issues that have been raised. Following are just a few of the common questions and issues raised, along with guidance on how to handle these issues:

- We've heard that escrow officers, on occasion, refuse to accept certifications on Forms 593-C, 593-L, 593-I, or 593-W and may even recalculate the seller's gain or loss information.

The law does provide that transferees (and, accordingly, escrow officers) do not have to withhold if sellers provide transferees certain certifications indicating there is no withholding requirement, but the certification can only be accepted "in good faith," based on all the information of which transferees (and, accordingly, escrow officers) have knowledge. Nothing in the law indicates an escrow officer would be expected to actually change the seller's figures or calculate a seller's gain or loss.

To accept a certificate "in good faith," an escrow officer should consider the following:

1. Is the Form 593-C, 593-I or 593-W completed and signed by the proper person? If not, don't accept it.
 2. Good faith acceptance -
 - a. If the escrow officer has no particular knowledge that is contrary to the information provided in the certification, accept the certification.
 - i. Examples of items the escrow officer would have knowledge of include:
 1. Sales price for entire property.
 2. Whether the sale is by an individual or nonindividual.
 3. Whether title is recorded in the name of a partnership.
 - ii. Examples of items the escrow officer would not likely have knowledge of include:
 1. Amount of gain or loss on the sale.
 2. Whether the property qualifies as a principal residence under IRC §121.
 - b. If the escrow officer has concerns about the certification provided but no particular knowledge, a few questions may relieve the concerns. Of course, if the escrow officer still has concerns that the certification is not correct, they should contact us toll free (888) 792-4900. The escrow officer should also provide this telephone number to the seller for assistance if there is a dispute.
- There have been questions regarding short sales, where there isn't enough cash to withhold the proper amount.

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The law requires the withholding. If the transferee completes the sale without sending FTB the proper amount of withholding, the transferee may be assessed penalties for not withholding. The parties to the transaction must arrange to pay the withholding.

- We've received calls from sellers asking questions about how to complete Forms 593-C or 593-L (for individual sellers) or Form 593-W (for non-individual sellers) and find that they were only given the forms but not the booklet including the instructions.

Because most real estate sellers would be unfamiliar with the whole concept of withholding, we developed one booklet for individual sellers and one for non-individuals to familiarize sellers with the withholding rules and to explain their options.

It's important that sellers receive withholding information sooner rather than later. FTB has developed press releases, Web pages specific to the program, and seminars to educate escrow officers, exchange companies, and realtors about the program. But we still have not, in many cases, reached the sellers. As an additional tool, we are developing pamphlets realtors can give to clients as soon as they list the property. We will appreciate any suggestions you have to help us inform sellers early in the sale process.

What's ahead...

Several valuable suggestions also came out during the first focus group meeting. There were suggestions ranging from more specific presentations to clarifying sections of the required forms. We plan to review all of the suggestions and work with the escrow associations to make changes as appropriate. And, speaking of forms, Publication 1016, *Real Estate Withholding Guidelines* is now available on our website at <http://www.ftb.ca.gov/geninfo/wscs/forms.html>

Additionally, we have conducted over 70 presentations regarding this new law to approximately 5,000 escrow, realtor, and 1031 exchange accommodators. Several associations asked for presentations more tailored and specific to their group. We've responded to those requests and will continue to do so. In fact, we look forward to it.

Contact us...

- For questions email: wscs.gen@ftb.ca.gov
- To schedule a seminar: wscs.seminars@ftb.ca.gov
- Toll free number: (888) 792-4900